



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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B-176384

May 21, 1973

Colonel Thomas A. Duke, Jr.
464-10-0813
Headquarters Army Air Defense Command - ADG SA
Ent Air Force Base, Colorado 80912

Dear Colonel Duke:

Reference is made to your letter to this Office dated January 22, 1973, with enclosures, requesting review of our decision dated November 14, 1972, denying your claim for reimbursement of the amount collected from your military pay for the cost of transportation furnished your dependent son from Milan, Italy, to Houston, Texas, on January 3, 1970.

The record indicates that while you were stationed with your dependents in Italy your son was selected for an Army ROTC Scholarship. Accordingly, your son was furnished Government transportation, in September 1969, to his selected college. In December 1969, your son returned to your station in Italy utilizing space available Government air transportation between McGuire Air Force Base and Frankfurt, Germany, furnished in his status as a student.

On December 29, 1969, you requested advance transportation of your son to Houston, Texas, on a space required basis in accordance with Army Regulation 55-46 and item 7, paragraph H7103-2 of the Joint Travel Regulations "for compelling personal reasons of a compassionate nature." Your request was approved under the provisions of the above Joint Travel Regulation. Special Orders No. 267, dated December 29, 1969, as amended, were issued authorizing such travel for the convenience of the Government. The cited authority was paragraph H7103-7 of the regulations (later amended to paragraph H7103-2, item 7), paragraph 41 of Army Regulation 55-46 and the approval of your request dated December 29, 1969. In consequence of these orders commercial air transportation costing the Government \$249.54 was utilized from Milan, Italy, to Houston, Texas.

Subsequently, the Finance Center, United States Army determined the travel was an improper expenditure of Government funds and collection action was initiated.

[Claim for Reimbursement of Travel - not approved]

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In our decision of November 14, 1972, we indicated that it was clear that your son returned to Italy in December 1969 as a student on a space available basis for the purpose of visiting the family during his college's holiday vacation period and that his return to Texas in January 1970 was for the purpose of resuming his college education. Such return was not authorized under paragraph M7103-2(5), which relates to travel in connection with the lack of adequate educational facilities or housing. Furthermore, his presence in Italy during the period involved did not result from the change of your permanent station to that place.

Also, we said that while the Commanding General, United States Army, Southern European Task Force (USASETAF), was the competent authority to authorize advance transportation of your dependent son for compelling and compassionate reasons under item 7, paragraph M7103-2 of the Joint Travel Regulations the actual facts did not support such a determination.

In your letter of January 22, 1973, you submit additional information regarding the compelling personal reasons for your son's return to Italy where you were then stationed. You say that it was necessary to counsel your son concerning his future. It thus appears the compelling reasons related only to events that occurred while your son was attending college in the United States.

Section 406(h) of title 37, U.S. Code provides for the return to the United States of a member's dependents from overseas if the Secretary of the service concerned determines such return to be in the best interests of the member or his dependents and the United States. Item 7 of paragraph M7103-2 of the regulations which implements this statute provides for return to the United States of a dependent of a member stationed outside the United States for compelling personal reasons. However, this provision contemplates return travel for compelling personal reasons that have arisen while the dependent is with the member overseas. There is no authority for return transportation when a dependent travels overseas because of personal difficulties that have arisen in the United States, and then wishes return transportation. Consequently, your son's travel from Italy to the United States in January 1970, subsequent to travel to Italy in December 1969, may not be regarded as within the purview of item 7 of paragraph M7103-2 of the Joint Travel Regulations.

Special Orders No. 267 also cited as authority for your son's return to Houston, Texas, on a space required basis, paragraph 41, Army Regulation 55-46. It provides that when a dependent becomes

involved in an incident which is embarrassing to the U.S. Government, prejudicial to order, morale and discipline or gives rise to conditions where the safety of dependents can no longer be insured because of adverse public feeling in the area, the commander of the area concerned may authorize transportation of dependents at Government expense to a designated place in the continental United States. The information available to this Office does not indicate that the cited regulation is applicable in your situation.

It should also be noted that Army Regulation 55-46 in effect at the time of your son's travel (Change 6, May 13, 1968), concerning overseas travel by students provided in paragraph 31b(1) for travel of student dependents who were attending school in the continental United States and who were proceeding overseas to join their parents between the spring and fall scholastic terms. Subparagraph (2) provided that initial travel would be on a space required basis for students who were joining parents in the overseas area for the first time upon completion of the spring scholastic term. All subsequent travel to and from the overseas area would be performed on a space available basis with an exception not applicable in your situation.

Subparagraph (4) of the above regulation provided that student dependents were permitted one round trip each year in a space available travel status. For the purposes of determining eligibility, one-half of the round trip was for travel to the continental United States aerial port of debarkation at the beginning of the school year in the fall and the return half in the spring. No additional travel via government transportation was authorized and unused trips could not be accumulated. Thus it appears that your son's travel in December 1969 which was not in the spring or fall, was not in accordance with the above-cited regulations.

In your letter you request that if our review of your claim is not favorable, we consider that your son traveled with you on your permanent change of station to the United States in July 1970. Special Orders Number 135, Headquarters, United States Army, Southern European Task Force, dated June 29, 1970, which reassigned you on a permanent change of station, listed your son as a dependent.

In your letter of November 4, 1970, to the Commanding General, Finance Center, U.S. Army you stated that transportation was not provided, either space required, or space available for this trip.

It would thus appear from your November 4, 1970, statement that your son did not travel with you in July 1970. The fact that your

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on traveled to the United States in January 1970 may not be considered as travel pursuant to your permanent change-of-station orders of June 1970.

Accordingly, the decision of November 14, 1972, is sustained. Your file regarding your claim, and our prior decision, are returned herewith.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States